

PROVIDING FOR CONSIDERATION
OF H.R. 2693, POPCORN WORKERS
LUNG DISEASE PREVENTION ACT

Ms. SUTTON. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 678 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 678

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 2693) to direct the Occupational Safety and Health Administration to issue a standard regulating worker exposure to diacetyl. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill are waived except those arising under clause 9 or 10 of rule XXI. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on Education and Labor. After general debate the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule the amendment in the nature of a substitute recommended by the Committee on Education and Labor now printed in the bill. The committee amendment in the nature of a substitute shall be considered as read. All points of order against the committee amendment in the nature of a substitute are waived except those arising under clause 10 of rule XXI. Notwithstanding clause 11 of rule XVIII, no amendment to the committee amendment in the nature of a substitute shall be in order except those printed in the report of the Committee on Rules accompanying this resolution. Each such amendment may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. All points of order against such amendments are waived except those arising under clause 9 or 10 of rule XXI. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommend with or without instructions.

SEC. 2. During consideration in the House of H.R. 2693 pursuant to this resolution, notwithstanding the operation of the previous question, the Chair may postpone further consideration of the bill to such time as may be designated by the Speaker.

The SPEAKER pro tempore (Mr. HOLDEN). The gentlewoman from Ohio (Ms. SUTTON) is recognized for 1 hour.

Ms. SUTTON. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Florida (Mr. LINCOLN DIAZ-BALART). All time yielded during con-

sideration of the rule is for debate only.

I yield myself such time as I may consume. I also ask unanimous consent that all Members be given 5 legislative days in which to revise and extend their remarks on House Resolution 678.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Ohio?

There was no objection.

Ms. SUTTON. Mr. Speaker, House Resolution 678 provides for consideration of H.R. 2693, the Popcorn Workers Lung Disease Prevention Act, under a structured rule.

The rule provides 1 hour of general debate controlled by the Committee on Education and Labor. The rule waives all points of order against consideration of the bill except clauses 9 and 10 of rule XXI.

The rule makes in order the Committee on Education and Labor amendment in the nature of a substitute now printed in the bill as an original bill for the purpose of amendment.

The rule makes in order the two amendments that were submitted to the Rules Committee and are printed in the Rules report.

Mr. Speaker, I rise today in favor of the rule and in favor of H.R. 2693, the Popcorn Workers Lung Disease Prevention Act.

The central Ohio town of Marion is located about two hours from my hometown of Barberton, Ohio. Marion has the unique distinction of being known as the "Popcorn Capital of the World." Just this month, the town of Marion hosted its yearly popcorn festival, complete with a popcorn scholarship pageant, parade and 5K run.

Unfortunately, these fun-filled festivities are not the only symbols of Marion's popcorn industry. It was recently discovered that a chemical used in the production of microwave popcorn is the cause of fatal lung disease in popcorn workers across the country, including the Popcorn Capital of the World, Marion Ohio.

Diacetyl is a chemical ingredient used in microwave popcorn that gives the popcorn a distinct buttery smell.

□ 1030

Diacetyl has been linked to illnesses in hundreds of workers in popcorn and other food production facilities across the United States. Diacetyl is specifically connected to a lung disease called bronchiolitis obliterans. This condition makes it difficult for air to flow out of the lungs. This difficulty is not reversible, and it is sometimes fatal.

In November of 2000, the National Institute for Occupational Safety and Health conducted voluntary tests of workers at a popcorn plant in Missouri. The workers in that plant suffered from chronic cough and shortness of breath almost three times as often as people in the general population. Those plant workers are over three times more likely to suffer from abnormally low airflow through their lungs. The

percentage of workers in the popcorn plant with asthma or chronic bronchitis was double the national rate. Several workers from this plant in Missouri had conditions that were so severe that they had to be placed on the lung transplant list.

Remarkably, Mr. Speaker, despite these reports from the Missouri popcorn plant and other plants across the country, there are currently no enforceable OSHA standards requiring exposure to diacetyl to be controlled.

It has been 7 years since the first cases of popcorn lung were identified. It has been 5 years since the National Institute for Occupational Safety and Health published its first report stating the inhalation of diacetyl was leading to deadly results. There is simply no excuse for the lack of action taken by OSHA in the face of this evidence. OSHA has failed to uphold its primary charge to protect the safety and health of American workers.

Mr. Speaker, this legislation fills that fatal void by protecting workers from this damaging chemical. The Popcorn Workers Lung Disease Prevention Act directs the Secretary of Labor to create standards for workers' exposure to diacetyl in popcorn plants and in any location where diacetyl is used or manufactured. Our legislation requires that final rules for exposure to diacetyl be in place under the Occupational Safety and Health Act no later than 2 years after the bill is enacted.

For the popcorn workers of Marion, Ohio, things are starting to look up. The popcorn factories in their town have eliminated the use of diacetyl because of its linkage to the fatal lung conditions. They have done the right thing.

But not every production facility that uses diacetyl has recognized the danger. In fact, on Monday of this week, one of America's largest food manufacturers introduced their new toasted butter flavoring. What is one of the ingredients in this new butter flavoring? Diacetyl.

Mr. Speaker, it is clear that some food manufacturers have gotten the message, but some are going to continue to ignore the science and put their workers in harm's way. Over 500 workers in Ohio are already suffering because of uncontrolled exposure to diacetyl.

Today, we act to protect our food industry workers from these harmful chemicals and dangerous conditions. We stand up for workers and their families. This legislation is not just about the conditions in food manufacturing plants across this country. It's about changing the way we treat working men and women. It's about respecting the risks that they undertake every day to feed their family. The hard-working people who make our world turn deserve safe working conditions, a living wage, and strong support from Congress.

I ask my colleagues to join me in supporting this rule and the underlying bill.

Mr. Speaker, I reserve the balance of my time.

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, I would like to thank my friend, the gentlewoman from Ohio (Ms. SUTTON), for the time, and I yield myself such time as I may consume.

H.R. 2693, the underlying legislation that is being brought to the floor today, directs the Secretary of Labor to establish an interim standard regulating worker exposure to diacetyl that applies to flavor manufacturers as well as all microwave popcorn production and packaging establishments that use diacetyl.

Diacetyl is a chemical found in trace amounts in nature and can be found in such foods and beverages as beer and wine and some forms of chicken. The compound is also used in the production of the artificial butter flavoring in microwave popcorn. Since 2000, several organizations, including the NIOSH, the OSHA, have raised concerns regarding health effects of diacetyl on workers in manufacturing plants that use the chemical.

Mr. Speaker, we all want to make sure that our workers are able to work in a safe environment. We also want to make certain that the policy that we enact is best for workers. We certainly want to make sure that in the end it doesn't harm them more. That's why a significant number of Members on our side of the aisle are concerned that this legislation may be premature.

I just received a letter from the American Bakers Association, which I will submit for the RECORD. Its president, the American Bakers Association president, says, "On behalf of the American Bakers Association, I am writing to express our opposition to the Popcorn Workers Lung Disease Prevention Act, which the House of Representatives is expected to consider this week. Passage of the legislation "would significantly short circuit the appropriate regulatory process by mandating that OSHA implement a regulation, including a permissible exposure limit, PEL, applicable to all sectors of the food industry, and based on limited scientific data."

Mr. Speaker, even though OSHA has raised concerns about diacetyl, the agency itself has also said, "At this time, insufficient data exists on which to base workplace exposure standards or recommend exposure limits for butter flavorings."

So we believe that it is important to give OSHA time to complete a scientific study of diacetyl exposure or to issue a recommended exposure limit for the use of that chemical. Without a complete study, Congress may push manufacturers to use different chemicals that could be even more directly responsible for diseases.

Yesterday, the minority in the Rules Committee offered an amendment to the rule to allow for an open rule so that any Member who wished to bring forth amendments, ideas for legislative

changes would have the opportunity to do so. Especially after listening to the commencement of this debate and if they have some expertise or perhaps they are in touch with some people with expertise, Members could bring forth amendments to improve this legislation. That is what we sought in the Rules Committee, and we offered an amendment to the rule to allow for an open rule.

The majority voted down an open rule on a party-line vote. We think it's unfortunate that the majority did not want to consider this bill under an open rule. Now, considering that only two amendments were submitted to the Rules Committee prior to consideration, I really do not believe that we would have faced an avalanche of amendments. But the reason that it would have been important is that any of our Members and/or their staffs, listening to the commencement of this debate, if they have expertise, they could bring that expertise forth in the form of ideas, legislative ideas, amendments, for improving this legislation. Unfortunately, that will not be possible because the majority in the Rules Committee shut down debate, did not allow that open rule.

I think an open rule would have been an easy lift on this legislation. Instead, we have this structured rule. So it is a missed opportunity, Mr. Speaker.

If the majority would have offered an open rule, as a matter of fact, they would have doubled the number of open rules for this session on nonappropriation bills, because they have only brought forth one. So they had an opportunity to double the amount of open rules. It would have been an easy lift. So an unfortunate opportunity was missed.

The material previously referred to is as follows:

AMERICAN BAKERS ASSOCIATION,
Washington, DC, September 25, 2007.

Hon. HOWARD McKEON,
House of Representatives,
Washington, DC.

DEAR MR. McKEON: On behalf of the American Bakers Association (ABA), I am writing to express our opposition to H.R. 2693, "the Popcorn Workers Lung Disease Prevention Act," which the House of Representatives is expected to consider this week. Passage of H.R. 2693 would significantly short circuit the appropriate regulatory process by mandating that the Occupational Safety and Health Administration (OSHA) implement a regulation, including a Permissible Exposure Limit (PEL), applicable to all sectors of the food industry, and based on limited scientific data. For over 100 years, the ABA has represented the interests of the wholesale baking industry and its suppliers—companies that work together to provide over 80 percent of the wholesome and nutritious bakery products purchased by American consumers.

The American Bakers Association prides itself on our long history of assisting baking companies to stay ahead of the curve on safety and health in the workplace. Our Safety Committee provides tremendous leadership on safety and health policy issues. We are committed to keeping our workers safe and support science-based standards and regulations. The ABA is aware of recent data from the National Institute for Occupational

Safety and Health (NIOSH) regarding the use of diacetyl in popcorn manufacturing and the flavor manufacturing industry. We also understand the severity of the health effects that have been demonstrated in a limited number of cases. However, we strongly believe that the recent NIOSH data does not accurately reflect the use of diacetyl in other sectors of the food industry, such as baking. Differences exist in the food processing industry, the concentrations of diacetyl used, and the existing controls in place.

Mandating specific requirements that OSHA must include in a diacetyl standard sets a precedent that should be avoided. Congress's role as set forth in the OSH Act of 1970 is to "assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources." However, it is the role of the Department of Labor to use its expertise for implementing regulations. For Congress to specify the applicable requirements of a "final standard" would bypass inappropriately the mechanisms and tests established under the OSH Act. Expedited regulation, even if directed by Congress, would rest on very limited scientific evidence and would represent rushed and inappropriate legislative and Agency action.

Further H.R. 2693 does not address the carefully developed procedures for rulemaking that Congress and the courts have put in place under the Administrative Procedures Act (APA), including provisions designed to protect small businesses. Finally, on September 24, 2007 OSHA announced its intent to move forward with a rulemaking on diacetyl. This rulemaking process should be allowed to move forward as it includes the appropriate procedural safeguards.

ABA respectfully urges you to oppose this legislation and allow the regulatory procedures designed to protect the interests of small businesses to guide OSHA in developing a standard.

Sincerely,

ROBB MACKIE,
President and CEO.

Mr. Speaker, I reserve the balance of my time.

Ms. SUTTON. Mr. Speaker, at this time, I am happy to yield 4 minutes to the gentlewoman from Connecticut, the chairwoman of the Agriculture Appropriations Subcommittee (Ms. DELAURO).

Ms. DELAURO. Mr. Speaker, I rise today in strong support of this rule to allow the House to consider the Popcorn Workers Lung Disease Prevention Act. This is important legislation. It would require the Occupational Safety and Health Administration to issue a standard to minimize worker exposure to diacetyl, which is an artificial butter flavoring chemical that has been linked to irreversible, deadly lung disease known as "popcorn lung." By passing this rule and bill, we meet our obligation to protect thousands of American workers and ensure the public health.

More than 7 years ago, a physician contacted the Missouri Department of Health and Senior Services to report eight cases of fixed obstructive lung diseases, bronchiolitis obliterans, also known as "popcorn lung," in workers from a Missouri microwave popcorn plant. Follow-up investigations by the National Institute for Occupational Safety and Health found diacetyl to

have caused the lung disease. Since that time, cases of popcorn lung have been identified in microwave popcorn workers in several States: Missouri, Iowa, Ohio, New Jersey, and Illinois. In all, NIOSH conducted six investigations at 10 microwave popcorn facilities, finding respiratory impairment among workers at a majority of the plants.

The science on this chemical's danger is clear. Beyond the NIOSH investigations, the Centers for Disease Control and Prevention called for health care providers to report additional suspected cases of respiratory disease in workers exposed to food-flavoring chemicals.

That was 5 years ago. This past April, the CDC again recommended that employers implement safety measures to minimize worker exposures to flavoring chemicals such as diacetyl.

When I asked Secretary of Labor, Elaine Chao, during an appropriations budget hearing why OSHA was dragging its feet on issuing an "emergency temporary standard," she responded, "This is a difficult evaluation because of the relative lack of specific scientific information concerning the health effects of diacetyl and other butter flavoring chemicals." Indeed, we should not be too surprised by the fact that, even after all these years, OSHA has failed to issue a standard to protect workers from exposure to diacetyl, preferring to rely instead on voluntary efforts.

The science is there. Scientists have called diacetyl's effect on workers' lungs "astonishingly grotesque." They likened it to "inhaling acid." Workers who are exposed to diacetyl today cannot afford to wait. This legislation would require engineering controls, respiratory protection, exposure monitoring, medical surveillance, and worker training. It would also apply to popcorn manufacturing and packaging as well as to the food flavorings industry.

Let me just tell you what the industry has done. ConAgra Foods and Pop Weaver, two major producers of microwave popcorn, have already announced that they will no longer use diacetyl to flavor their microwave popcorn because they understand it. They see the science and know that we have to act.

□ 1045

We have a responsibility in this body to both consumers and to workers. Yesterday, however, Kraft Foods announced a new toasted butter flavor which contains diacetyl; in fact, Kraft Company flavorist, Susan Parker, told reporters, "To some customers diacetyl is not an issue; to others, it is. We're moving forward to formulating solutions to meet customer need." But what Kraft fails to realize and fails to mention is that diacetyl is an issue for all workers. This much we know, and that is why we need this legislation.

I urge my colleagues to support this rule.

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, I will be asking

for a "no" vote on the previous question so that we can amend this rule and allow the House to consider a change to the rules of the House to restore accountability and enforceability to the earmark rule.

Under the current rule, so long as the chairman or sponsor of a bill, joint resolution, conference report or manager's amendment includes either a list of earmarks contained in the bill or report or a statement that there are no earmarks, no point of order lies against the bill. This is the same as the rule in the last Congress. However, under the rule, as it functioned under the Republican majority in the 109th Congress, even if the point of order was not available on the bill, it was always available on the rule as a question of consideration. But because the Democratic Rules Committee specifically exempts earmarks from the waiver of all points of order, they deprive Members of the ability to raise the question of earmarks on the rule.

This amendment will restore the accountability and enforceability of the earmark rule to where it was at the end of the 109th Congress to provide Members with an opportunity to bring the question of earmarks before the House for a vote.

Last year, the distinguished new Speaker said that if she would become Speaker, she would require all earmarks to be publicly disclosed and would "put it in writing." However, the new majority is falling quite short of the promise. Certainly this week, this is the second rule we are considering this week, and the second time the majority has disregarded earmark transparency. That's 0 for 2 this week, not a good week for transparency. Certainly it could be said it's a good week for hidden earmarks.

Mr. Speaker, I ask unanimous consent to insert the text of the amendment and extraneous materials immediately prior to the vote on the previous question.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, I yield back the balance of my time.

Ms. SUTTON. Mr. Speaker, let me begin with a point of clarification; the earmark rule was not waived. And to the question about whether this bill today is premature, I would argue that it's not premature for the 500 workers in Ohio and those across this country who are now suffering from this irreversible disease.

I have heard the workers' stories from the Ohio popcorn plants. I have heard the story of a worker who worked 12-hour shifts in the popcorn factory outside of Marion, Ohio. His job was to mix the flavors, measuring and dumping butter-flavored powders and pastes into the vats of soybean oil. Now, Mr. Speaker, he is so crippled from breathing the vapors in the plant

that he hardly has the strength to hold his granddaughter. He is racked with spasms that leave him dizzy and incapacitated.

In 2001, after an outbreak of diseases at the popcorn factory in Missouri, his employer guaranteed him that his plant was safe. Mr. Speaker, OSHA's failure to protect our workers by ignoring the reports, studies and warning signs has endangered the health of families. That is why we must act today. Our workers should never have to choose between their health and feeding their families. I urge a "yes" vote on the previous question and on the rule.

The material previously referred to by Mr. LINCOLN DIAZ-BALART of Florida is as follows:

AMENDMENT TO H. RES. 678 OFFERED BY MR. DIAZ-BALART OF FLORIDA

At the end of the resolution, add the following:

SEC. 3. That immediately upon the adoption of this resolution the House shall, without intervention of any point of order, consider the resolution (H. Res. 479) to amend the Rules of the House of Representatives to provide for enforcement of clause 9 of rule XXI of the Rules of the House of Representatives. The resolution shall be considered as read. The previous question shall be considered as ordered on the resolution to final adoption without intervening motion or demand for division of the question except: (1) one hour of debate equally divided and controlled by the chairman and ranking minority member of the Committee on Rules; and (2) one motion to recommit.

Ms. SUTTON. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

PROVIDING FOR CONSIDERATION OF H.J. RES. 52, CONTINUING APPROPRIATIONS, FISCAL YEAR 2008

Ms. SLAUGHTER. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 677 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 677

Resolved, That upon the adoption of this resolution it shall be in order to consider in the House the joint resolution (H.J. Res. 52) making continuing appropriations for the fiscal year 2008, and for other purposes. All points of order against the joint resolution and against its consideration are waived except those arising under clause 9 or 10 of rule XXI. The joint resolution shall be considered